

NATURAL RESOURCES COMMISSION

Potawatomi Inn – Pokagon State Park
Angola, Indiana

Minutes of May 17, 2011 Meeting**MEMBERS PRESENT**

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Kent Abernathy
Mark Ahearn
Brian Blackford
Donald Ruch
Doug Grant
R.T. Green

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhrn	Executive Office
Cheryl Hampton	Executive Office
Shelley Reeves	Executive Office
Chris Smith	Executive Office
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Phil Bloom	Communications
John Bacone	Nature Preserves
Jenny Orsburn	Nature Preserves
Phil Marshall	Entomology and Plant Pathology
Megan Abraham	Entomology and Plant Pathology
Amanda Ricketts	Forestry
Ted Bohman	State Parks and Reservoirs
Terry Coleman	State Parks and Reservoirs
Matt Wronowicz	State Parks and Reservoirs
Dustin Clark	State Parks and Reservoirs
Scotty Wilson	Law Enforcement
Steve Hunter	Law Enforcement

GUESTS PRESENT

Tim Julien	Dick Ristine
Joe Hunting	Stephen Cole
Dick Dodger	Judy Mueller
Ron Mueller	Dan Plath
Pete Hippensteel	Alan Hux
Barb Simpson	Jamieson Schiff
Alan Pope	Ardith Peterson
Art Eberhardt	Karl Shank

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 6:00 p.m., EDT, on May 17, 2011, at Potawatomi Inn, Pokagon State Park, Angola, Indiana. With the presence of nine members, he observed a quorum.

The Chair recognized and thanked Kent Abernathy, Chief of Staff for Indiana Department of Environmental Management for serving as proxy for Commissioner Thomas Easterly.

Vice Chair Jane Stautz moved to approve the March 15, 2011 meeting minutes. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

Robert Carter, Jr. provided the Director's report. He welcomed Representative Dick Dodge and the Commission to the Pokagon State Park. He thanked Representative Dodge for attending the meeting. "We are really working hard to reach out to members of the General Assembly and educate them on our process so that they can get to know our members."

Representative Dodge noted that Pokagon State Park is one of his favorite state parks.

Director Carter said Pokagon State Park is a great place to visit. He said the Trine State Recreation Area, which is located directly across from the Pokagon State Park, will open in about one month. He said Terry Coleman, Area Supervisor, and Ted Bohman, Property Manager of the State Park, are coordinating efforts to open the recreation area.

The Director reported the DNR is dealing with the impacts of heavy flooding, especially in Southern Indiana. The three southern reservoir properties have been damaged, and as yet it is unknown how much damage the property at Lake Monroe has incurred due to the high water, but as the waters recede the damage will be assessed. He said flooding has adversely impacted the DNR's camping and gate revenues. "We hope that we can have, at least, some normality here pretty soon in the reservoir regions." Director Carter said flooding has also negatively impacted the sale of hunting and fishing licenses. "We have a lot of Hoosiers that want to get out and enjoy the outdoors, but they just can't because of the weather."

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He said there was flooding at Hovey Lake Fish and Wildlife Area, and both property residences and the property office were under water. The high water has also impacted the Asian carp efforts. Department staff has tagged approximately 50 Asian carp for behavioral studies, and there are plans to tag about 50 to 60 more.

Davis said “Reynolds, Indiana” was labeled Bio-Town, USA, and “a lot of innovative things were happening there about energy savings.” One resulting technology is a wastewater treatment system using algae, and the system will be installed at the Indiana Dunes State Park to replace the existing standard treatment plant. Davis said the state-of-the-art system will be completed in approximately one year.

Ron McAhron, Deputy Director, Bureau of Resource Regulation, provided his report. He commended DNR’s Division of Water for addressing a compromised dam in Hendricks County. In coordination with the Army Corps of Engineers, the lake level was pumped down to reduce the risk of dam failure and impacts to the immediate downstream property owners and roadway.

McAhron said he attended a three-day seminar in Chicago regarding efforts to impede the spread of Asian carp. He also noted the Indiana Legislature has modified and updated the statutes governing oil and gas. “It was really a rewarding situation to work with three independent groups and come to something that was mutually acceptable.” Proposed rule amendments will be presented to the Commission in the future.

The Chair noted that Patrick Early, Chair of the Advisory Council, was not present due to schedule conflict.

The Chair said he was pleased that the Commission was able to meet outside of Indianapolis. He thanked the Division of State Parks and Reservoirs staff for scheduling the meeting and field trips. He asked Ted Bohman to provide an update on initiatives at Pokagon State Park.

Ted Bohman said Pokagon State Park is blessed to have a Young Hoosiers Conservation Corps crew to assist with a few major projects at the park—trail restoration and an upgrade to the group camp to reconnect the buildings and make them ADA accessible. He added that Pokagon hosted the first-ever corporate Angola Chamber of Commerce toboggan challenge in which 39 teams participated. There were 88,000 riders on the toboggan track during this past winter season.

CHAIR AND VICE CHAIR

Updates on Commission and Committee activities

Vice Chair Jane Ann Stautz reported the Commission’s AOPA Committee did not meet, but a meeting is scheduled for July.

DNR, EXECUTIVE OFFICE**Consideration and identification of any topic appropriate for referral to the Advisory Council**

No new items were identified during the meeting.

PERSONNEL ACTION**Permanent appointment of Joshua Kush as Assistant Property Manager at Morgan-Monroe State Forest**

John Davis presented this item. He said he attended the Yellowwood Morgan-Monroe Open House held on May 14 and met Joshua Kush, the Assistant Property Manager. Kush has been marking timber and coordinating efforts in completing the Yellowwood Lake dredging. Kush “originally hails from New York” and worked for the Department of the Interior in Wyoming for the last two years. “Joshua’s job as an Assistant Manager is essentially managing the 25,000 acres of Yellowwood State Forest, while another assistant manager manages Morgan-Monroe. There’s a lot of responsibility.” Davis said he and the Division of Forestry recommend permanent appointment of Joshua Kush.

Brian Blackford moved to approve for permanent appointment Joshua Kush as Assistant Property Manager at Morgan-Monroe State Forest. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Permanent appointment of Skyler Hill as Assistant Property Manager at Prophetstown State Park

Dan Bortner, Director of the Division of State Parks and Reservoirs, presented this item and the next four agenda items. He said Skyler Hill is doing an “outstanding job” as Assistant Property Manager at Prophetstown State Park where he works on prairie restoration and other projects. “There are tons and tons of things to do, and Skyler’s dug in and has really made a big difference.” Bortner recommended permanent appointment of Skyler Hill.

Donald Ruch moved to approve for the permanent appointment of Skyler Hill as Assistant Property Manager at Prophetstown State Park. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Permanent appointment of Dustin Clark as Assistant Property Manager Mounds State Park

Dan Bortner said that Dustin Clark as Assistant Property Manager at Mounds State Park and Ft. Harrison State Park; Matt Taylor as Assistant Property Manager at Clifty Falls State Park; Mike

Miller as Assistant Property Manager at Ouabache State Park; and Stan Baelz as Assistant Property Manager at O'Bannon Woods State Park "are highly recommended for permanent appointment." He introduced Dustin Clark.

Donald Ruch moved to approve for permanent appointment of Dustin Clark as Assistant Property Manager Mounds State Park. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Permanent appointment of Matt Taylor as Assistant Property Manager at Clifty Falls State Park

[See discussion above.]

Donald Ruch moved to approve for permanent appointment of Matt Taylor as Assistant Property Manager at Clifty Falls State Park. Upon a voice vote, the motion carried.

Permanent appointment of Stan Baelz as Assistant Property Manager at O'Bannon Woods State Park

[See discussion above.]

Donald Ruch moved to approve for permanent appointment of Stan Baelz as Assistant Property Manager at O'Bannon Woods State Park. Upon a voice vote, the motion carried.

Personnel interview of Mike Miller for Assistant Property Manager at Ouabache State Park

Dan Bortner also presented this item. He said Mike Miller is a graduate of Indiana University's Outdoor Recreation Management Program. Miller has spent two years with DNR as a seasonal employee at McCormick's Creek State Park and has held the position of full-time security officer at Mississenewa Reservoir.

Bortner said, "We've always had good folks from Ball State University from its outstanding Natural Resources Program. Most of my senior staff members are Ball State graduates. We have a lot of Purdue graduates within our management ranks. We really try to reach out to Indiana University, which has a very, very strong program. Folks that have been working for us as seasonal employees, we've been trying to pay particular attention to that."

Bortner said Mike Miller "earned his due...running security for Mississinewa. I know that [Director Carter] and the Commission are very familiar with the size, magnitude, and scope of that property. Mike has done a really good job for us".

Mike Miller said he will be taking over as Assistant Property Manager at Ouabache State Park. "I'll be living on the property, and it is hard to say day-to-day exactly what I will be doing, but

I'm sure it will be no fewer than 400 things that I can list on my resume by the time I leave there. I'm very much looking forward to working...on the property."

Doug Grant moved to appoint Mike Miller as Assistant Property Manager at Ouabache State Park. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Personnel interview of Matt Wronowicz for Assistant Property Manager at Brookville Lake-Whitewater Memorial State Park

Bortner also presented this item. He reported Matt Wronowicz graduated from Indiana University's School of Outdoor Recreation and Management. Wronowicz has worked with the Department for four seasons at Monroe Lake as a Wildlife Specialist in resource management. He has been through the interview process a couple of times, and "we finally have a good fit for him with his outdoor recreation background coupled with his resource management experience. So, at Brookville-Whitewater, he will be an outstanding addition to the management team."

Matt Wronowicz said he met Bob Felix, the Property Manager at Brookville Lake-Whitewater Memorial State Park. "It's a big park, and I'm just ready to take responsibility. This is where my passion lies, so I am anxious to get started."

Brian Blackford moved to appoint Matt Wronowicz for Assistant Property Manager at Brookville Lake-Whitewater Memorial State Park. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

NATURE PRESERVES

Consideration of the dedication of an Addition to the Conrad Savanna Nature Preserve, Newton County

John Bacone, Director of the Division of Nature Preserves presented this item. He said the proposed Addition to the Conrad Savanna Nature Preserve is a 140-acre tract of black oak savanna and high quality sand savanna that was purchased with Indiana Heritage Trust funds and assistance from The Nature Conservancy. The terrain is managed by prescribed burning. "We had a really spectacular prescribed burn this past spring." The Addition's habitat (sandy, oak sand dunes) contains very rare plant and animal species. The tract is located off U.S. 41 near Willow Slough Fish and Wildlife Area, whose staff coordinates management of deer control hunts on the nature preserve. The tract is also near the Kankakee Sands Wetland Restoration area. "It's a pretty easy spot to visit if you are ever up in that part of the State." Bacone recommended dedication of the tract as an addition to the Conrad Savanna Nature Preserve.

Donald Ruch moved to approve the dedication of the Addition to the Conrad Savanna Nature Preserve as described by the Division of Nature Preserves. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of Allee Woods Nature Preserve, Parke County

John Bacone also presented this item. He said Allee Woods is located on Sugar Creek and is within the Healthy Rivers Initiative Conservation Project established by Governor Mitch Daniels. Allee Woods is embedded in a matrix of other public properties. Mossy Point Nature Preserve is immediately to the south, and other State properties are in proximity.

Bacone said the Allee Woods property is owned by Wabash College and is a national natural landmark. “It’s a very spectacular old growth forest complex.” DNR, the Wabash College Board of Trustees, and its President have planned the dedication for several years. “We are pleased to finally be able to bring Allee Woods to be dedicated as a nature preserve.”

Dick Ristine said he grew up in Crawfordsville near Allee Woods. He said Allee Woods is a splendid old growth forest along Sugar Creek located just west of U.S. 41 and downstream from Turkey Run State Park. Until the mid 1950s, the 163-acre tract was owned by the Allee family. “Professor Warder Clyde Allee was a distinguished biology professor at Northwestern University. He was impressed with the research that one of his former students, Dr. Elliot Williams, a zoology professor at Wabash College, was doing in West Central Indiana.” Professor Allee bequeathed the forested tract to Wabash College to help advance the Williams research. Under terms of the bequest, for 99 years from 1956 no trees could be removed from and no structure erected on the land. The property was to be used “exclusively by the College’s faculty and students for research and study in ecology.” Also, “no trespassing” and “private property” signs were to be posted. Failure to abide by any of these conditions during the 99-year period would result in title reverting to Professor Allee’s heirs.

Ristine said after many years of effort to develop a protection plan for this tract, John Bacone and Friends from The Nature Conservancy met with Wabash College officials and senior biology professors to encourage Wabash College to establish the highest level of protection for Allee Woods, even beyond the 99-year moratorium on development. Wabash College recommended to its Trustees the dedication of Allee Woods as a State nature preserve, and the approval was granted in January 2008. The approval included a stipulation that no publicity would accompany the dedication, and the tract would remain available exclusively to the Wabash College faculty and students for study in ecology. Ristine concluded, “We are excited about this important conservation success, and we would like to hoot and holler should you approve this dedication tonight. We will be content to celebrate quietly and privately, and we ask that you accommodate Wabash [College’s] wishes.”

The Chair thanked Ristine for his comments. “It’s always nice to have more color about these nature preserves. Sometimes we see and hear of them, and take action, but there are always stories accompanying these dedications.”

Donald Ruch moved to approve dedication of Allee Woods Nature Preserve. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration of approval of a nonrule policy document, Information Bulletin #67, to assist with the evaluation of petitions pertaining to the exemption from motorboat speed limits which otherwise apply on small lakes; Administrative Cause No. 11-062L

Lt. Col. Steve Hunter of the DNR's Division of Law Enforcement presented this item. He said the nonrule policy provides guidance regarding the evaluation of small lake speed exceptions. He said IC 14-15-3-10 sets speed limits on small lakes at ten miles per hour, but by statute a petition process allowed for the authorization of limited high-speed boating under limited circumstances. The policy provides a process for persons on small lakes to petition for an increase of statutory boating speed during certain periods of the day. Hunter then recommended approval of the nonrule policy document.

Doug Grant asked whether there were speed limits on a lake under 300 acres.

Hunter answered that the boating speed on lakes under 300 acres is ten miles per hour. He explained that there are three to four options for amending a speed limit on a small lake, such as increasing speed on 1:00 pm to 4:00 pm on Saturdays and Sundays or Wednesdays, Thursdays, and Fridays. He said the amended speeds would be codified in a rule under 312 IAC 5-11. Hunter explained that a petition must contain majority vote of all adjacent property owners to the small lake.

R.T. Green moved to approve the nonrule policy document, Information Bulletin #67 to assist with the evaluation of petitions pertaining to the exemption from motorboat speed limits which otherwise apply on small lakes. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

FISH AND WILDLIFE

Consideration of approval of amendments to the Listing of Public Freshwater Lakes (Information Bulletin #61); Administrative Cause No. 11-060A

Linnea Petercheff, Program Specialist with the Division of Fish and Wildlife, presented this item. She said six lakes were proposed to be removed from the list and two lakes were proposed to be added. She said the list was first developed in 2009 to provide guidance to DNR staff and the public for purposes of the Lakes Preservation Act (IC 14-26-2) and associated permit requirements.

Petercheff said that in 2010, the Commission's Division of Hearings received a request to remove from the list Heron Lake in Kosciusko County. After additional research, the Department is requesting that Heron Lake be removed as it does not meet the requirements of acquiescence for a public freshwater lake. She said a 1950 permit and an agreed order, which reflected that the public could not obtain access to the lake, were located. Additional research also warrants the removal of Full Lake, Hosey Lake and Viberg Lake in Allen County and Beigh

Lake and Heckman Lake in Kosciusko County. Petercheff said that the Department does not believe that Hosey Lake is a body of water substantially at rest. The other lakes are recommended for removal due to the lack of acquiescence by landowners and that there have been no permits issued by the Department for any work along the shorelines of those lakes. Petercheff said Dollar Lake in Whitley County is recommended for removal due to an Indiana Court of Appeals decision, which indicated that the lake is private.

Petercheff said the Department is requesting to add two lakes to the list. Palestine Lake in Kosciusko County would be added due to Department issuance of permits for shoreline construction activity. Tadpole Lake in Whitley County would be added, because landowner acquiescence has been established. “Anglers routinely park along an old county road and walk to the lake. There is no permission even requested by the landowners, so people can basically walk onto the property at any time”. She noted that technical amendments are also recommended to add location specificity.

The Chair observed, “When the Commission put forth this list we knew it was going to be changing over time. It has served its purpose especially in matters before the AOPA Committee”.

Donald Ruch moved to approve amendments to the Listing of Public Freshwater Lakes (Information Bulletin #61). Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption of amendments to 312 IAC 2-4-12 governing fishing tournaments and 312 IAC 8 governing activities on DNR properties; Administrative Cause No. 11-052A

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. With the transfer of J. Edward Roush Lake (formerly known as “Huntington Lake”) from the management by Division of State Parks and Reservoirs to the Division of Fish and Wildlife, Roush Lake is proposed to be deleted from 312 IAC 2-4-12(b), which governs the conduct of fishing tournaments on reservoirs. Fishing tournaments scheduled at Roush Lake would be permitted by the Division of Fish and Wildlife as a special use.

Reiter said proposed amendment at 312 IAC 8-2-3(h) would offer clarification by adding references to the rules governing deer and waterfowl hunting, which contain specifications for hunting blinds on DNR property. Amendments at 312 IAC 8-2-3(j) would correct a reference to scientific purposes licenses and would correct an administrative code reference to taking reptiles and amphibians on DNR property. “It’s just making it clear that game frogs and turtles can be taken with hunting or fishing license not only with a scientific purposes license.”

312 IAC 8-2-3(k) would prohibit the possession of lead shot while hunting mourning doves on a DNR property. Reiter said that in 2008, the Division of Fish and Wildlife posted signs on its properties regarding the prohibition and started an education-information campaign for dove hunters to inform that the prohibition would become effective in 2009. The prohibition was

extended to reservoir properties in 2010. “We heard very little from hunters in opposition of that. It’s a common trend on public property across the nation, especially in dove hunting field. Manufacturers are making nontoxic shot in all gauges and loads.”

Reiter said the amendment to 312 IAC 8-2-8 would remove the references to specific airborne human transportation devices, including hang gliders, hot air balloons, aircraft, and tow kites. The removal of specific references would not change the requirement that a license is needed to use an airborne human transportation device or motor-driven airborne device on a Department property, unless the activity takes place at a DNR site designated for the particular purpose. Reiter said the terms “airborne human transportation device” and “motor-driven airborne device” would be more inclusive and would cover any transportations devices that are available in the future. With the use of new inclusive terms at 312 IAC 8-2-8, proposed is the deletion of 312 IAC 8-2-9(d), which provides standards applicable exclusively to the use of tow kites.

The Chair noted the issue of the use of tow kites on DNR properties was brought before the Commission in the form of a petition for a rule change. He asked whether the petitioner was involved in the proposed rule amendments.

Steve Hunter said the Department has involved the petitioner in discussions regarding the rule proposal. He added that the petitioner’s request was directed primarily to the use of a tow kite on a particular fish and wildlife access site. The petitioner’s request was handled under the permitting process.

Mark Ahearn moved to give preliminary adoption of amendments to 312 IAC 2-4-12 governing fishing tournaments and 312 IAC 8 governing activities on DNR properties. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

ENTOMOLOGY AND PLANT PATHOLOGY

Consideration of preliminary adoption of amendments to 312 IAC 18, governing entomology and plant pathology, to set standards for pest-and-pathogen-free nursery stock, as well as amendments to amend rule language to conform to 2009 statutory amendments; Administrative Cause No. 146E

Phillip Marshall, Indiana State Entomologist, presented this item. He explained that P.L. 17-2009 amended the definition of “pest or pathogen” resulting in a proposed amendment to the definition of “pest or pathogen” at 312 IAC 18-1-13 by adding fungus, parasitic plant, mollusk, and exotic weed. Another amendment at 312 IAC 18-2-2 would clarify the declaration of the boundaries of infested areas and quarantines. “The prior rules restricted us to boundaries by township, and that is somewhat unworkable in many situations on a biological basis.” 312 IAC 18-3-22 would provide standards for production of pest and pathogen free nursery stock. The Commission considered a previous rule amendment proposal governing the same matter. He said the Commission’s recommendations have been incorporated into the new proposal. Marshall explained the three proposed rule amendments were combined for efficiency.

Donald Ruch asked for clarification of the use of the term “microorganism” in the definition of “pest or pathogen”.

Marshall said “microorganism” could also include a virus. “That was more of a broad spectrum term. We felt it was more appropriate to be more specific with microorganisms such as fungi or bacteria.” Marshall said the proposed amendment to the definition of “pest or pathogen” and the quarantine boundaries were recommended by the Invasive Species Task Force.

Ruch said, “So, in summary then, the term is meant to represent basically viruses and bacteria?” Marshall answered in the affirmative.

Doug Grant moved to give preliminary adoption of amendments to 312 IAC 18, governing entomology and plant pathology, to set standards for pest-and-pathogen-free nursery stock, as well as amendments to amend rule language to conform to 2009 statutory amendments. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Preliminary adoption to amend Gypsy Moth Quarantine 312 IAC 18-3-14 to add LaPorte and St. Joseph counties; Administrative Cause No. 11-056E

Phillip Marshall also presented this item. He reminded the Commission that Indiana has had a gypsy moth quarantine for many years. The addition of LaPorte County and St. Joseph County to the quarantine area is warranted based on biological survey information. With the proposed amendments, Indiana’s quarantine would match the Federal quarantine. “If we do not adopt the two counties..., then the USDA could remove Federal listing for the other counties. That would mean the entire State of Indiana would be subject to the Federal quarantine; and, therefore, anybody moving product or regulated items from anywhere in Indiana, even though there is no gypsy moth in that area of the State, would be subject to quarantine and subject to violations of the Federal law”. He reported the last addition to the quarantine area was in 2000, and this modest expansion was primarily because of the success of the “Slow the Spread Program”. He then recommended preliminary adoption of the proposed amendments adding St. Joseph County and LaPorte County to the gypsy moth quarantine.

Brian Blackford moved to give preliminary adoption of amendments to 312 IAC 18-3-14, adding LaPorte County and St. Joseph County to the gypsy moth quarantine. Donald Ruch seconded the motion. Upon the voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for the Establishment of the South Richland Conservancy District; Administrative Cause No. 11-042C (Fulton Circuit Court Cause No. 25C01-1101-MI-1)

Jennifer Kane, Hearing Officer, presented this item. She said the Fulton Circuit Court referred the petition for the creation of the South Richland Conservancy District to the Natural Resources

Commission on February 16, 2011. The South Richland Conservancy District is proposed to be established for the purposes of providing water supply, including treatment and distribution, for domestic, industrial, and public use. Kane said the Petitioner's Attorney, Alan Hux, was present.

Kane said the public hearing was held on April 20 in Rochester, with a summary of evidence received starting on page two of the recommended report. The proposed conservancy district includes 47 freeholds in unincorporated Fulton County. The impetus for the proposed district was to supply water to an area where groundwater is contaminated. One of the freeholders, Textron, operated a metal fastener manufacturing plant ("Torx facility") for many years until Textron sold the facility in 2006. Subsurface investigations identified chlorinated solvent contamination in groundwater leaving the facility and migrating south and southeast onto area properties. Eight residential drinking wells have been identified as containing chlorinated solvents. As a result, the United States Environmental Protection Agency (US EPA) requested Textron to supply public water to the area through extension of the City of Rochester water main. Textron is finalizing a consent order with US EPA to achieve this goal.

Kane said the Commission provides analyses described in the Indiana Conservancy Act at IC 14-33-2-17, but the statutory structure does not anticipate the Commission will approve or decline the petition to establish the conservancy district or a particular purpose for a conservancy district. At IC 14-33-2-26 and IC 14-33-2-27, this authority rests exclusively with the Fulton Circuit Court. The creation of a conservancy district does not remove any obligation to acquire a license or permit. The Commission is required to make a determination and report to the Fulton Circuit Court whether the proposed district, for the purpose stated meets five statutory conditions.

Kane said that because of the groundwater contamination and the willingness of the City of Rochester to sell water to the proposed district, the proposed district appears to be necessary. The proposed district holds promise of economic and engineering feasibility. Several options were considered regarding the provision of water to the freeholders, but the one with the most economic and engineering feasibility is the installation of a waterline from the Rochester to the proposed district. Textron represented it will cover the costs installation and the maintenance of the water line extension and appurtenances. By extending the Rochester water main and installing a distribution system to the affected residents within the proposed district, the public health will be served immediately.

Kane noted that prior to the public hearing, the Petitioners' attorney indicated there were freeholders within the proposed district boundaries that wished to be removed from the proposed conservancy district. "However, no testimony regarding the removal of freeholders was provided during the Commission's public hearing." The Petitioners' attorney provided to the DNR's Division of Water a map, which depicts freeholds as shaded parcels whose owners wish to be removed from the proposed district. One parcel was not shaded and includes the handwritten name "Hunting". Joe Hunting wrote an email to Kane to indicate "he signed the Petition, and it was his continued wish to remain in the proposed conservancy district." She concluded the proposed district would cover and serve a proper area as filed with the Fulton Circuit Court in the original Petition and as depicted in Exhibit A-1 attached to the recommended report. The proposed conservancy district could be established and operated in a manner compatible with established conservancy districts; flood control projects; reservoirs; lakes;

drains; levees; and other water management or water supply projects. She recommended that the Commission adopt the findings and recommendations as the Commission's report to the Fulton Circuit Court.

Alan Hux, Petitioners' Attorney, stated, "We believe that if there are any of the people that have expressed any interest in removing their properties from the boundaries of the district, that we would still meet the contiguousness based upon the public roads." He said that the proposed conservancy district, as set forth in the original petition before the Fulton Circuit Court, meets the contiguous requirement.

Joe Hunting, a freeholder within the proposed conservancy district, said he and his family "do want treated water not only for health concerns of our family within this contaminated area, but also to help mitigate any property damage and the value of the property damage from the contamination. We certainly want treated water to keep ourselves healthy, and hopefully, to sell our home someday." His neighbors may or may not want treated water, but Hunting reiterated that he wished to remain in the proposed district. "I would hope that this Commission would find a way to allow that water be delivered to our residence."

The Chair explained that the Commission has statutory requirements to report to a circuit court regarding petitions for establishment of conservancy districts. The Commission is now asked to consider approval of the hearing officer report as written or to consider any amendments. The Commission's report would then be filed, in this instance, with the Fulton Circuit Court.

The Vice Chair, referencing Hearings' Exhibit 4 on page 19 of the report, asked Joe Hunting to identify his property.

Hunting explained his property was the area that is not shaded. He also noted that the Department owns property immediately east of his property.

Hux provided a color copy of the Hearings' Exhibit 4 to Commission members. He noted a solid black line identifies the proposed boundaries of the conservancy district as filed with the Fulton Circuit Court. Persons who have indicated a desire not be included in the proposed district are designated in purple shade. A red line, which follows the Tippecanoe River and proceeds down circumscribing the Hunting property, depicts the new proposed district boundary. The new proposed boundary includes the Hunting property and would satisfy the contiguity requirement.

Vice Chair Jane Ann Stautz moved to approve the recommended report as presented as the Commission's report with respect to the Petition for the Establishment of the South Richland Conservancy District. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of rule processing, public comments, analysis, and recommendation regarding final adoption of rule amendments to 312 IAC 9 governing falconry; LSA Document #10-667(F); Administrative Cause No 10-088D

Sandra Jensen, Hearing Officer, presented this item. She said the proposed rules resulted from amendments to the federal regulations governing falconry licenses. The new federal regulation requires Indiana, and any State wishing to allow falconry, to establish laws consistent with the new Federal standards at 50 CFR 21.29, and to obtain certification of those rules no later than January 1, 2014. Jensen said the proposed amendments to the existing rule governing falconry (312 IAC 9-10-13) are extensive, so she recommended codifying new standards at 312 IAC 9-10-13.1 and repealing the existing section 13. The definition of “falconry” at 312 IAC 9-1-7 would also be amended. Jensen thanked Linnea Petercheff for her efforts in drafting the rule proposal and the Indiana Falconry Association for its input.

Jensen said she believes the amendments incorporate the necessary federal regulations and establish seasons for taking raptors from the wild for use in falconry as well as for the falconry hunting seasons, which are determined by the Department. She recommended additional revisions to the proposed rule language that was published in the *Indiana Register*. All but one of the revisions is based on a written comment received during the hearing process. She noted that a technical correction at subsection (II) is also proposed for final adoption. Jensen recommended the Commission give final adoption to the proposed rule amendments as revised and as contained in Exhibit D of the Hearing Officer’s Report.

Allen Pope, President of the Indiana Falconers Association (the “IFA”), said the sport of falconry has been around for 4,000 years. “You can imagine that those who practice it today are a pretty passionate group of people. It is really a lifestyle not a hobby. ... I just want to make a point that the process from our point of view was extremely collaborative. We felt a lot of inclusion.” He said Petercheff’s efforts should be commended, “because this was a very significant effort to attack these problems.” Pope concluded, “The 80 plus falconers, and on behalf of the officers of the IFA, we are very pleased with the outcome although not everything that we would have ideally liked to be in here is included. The explanation that we received was very understandable. So, it’s in the best interest for the raptors that we deploy in the sport, as well as from a pragmatic standpoint, just practicing the sport of falconry in the State of Indiana. We think the rule as it is drafted at this point is more than adequate, and we will support it.”

Donald Ruch moved to give final adoption to rule amendments to 312 IAC 9 governing falconry. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of rule processing, public comments, analysis, and recommendation regarding final adoption of rule amendments to 312 IAC 9-3 governing possession and release of furbearing mammals; LSA Document #10-614(F); Administrative Cause No 10-100D

Sandra Jensen also presented this item. She said the proposed rule amendments govern possession and release of furbearing mammals. Under the proposal a person taking a nuisance animal would no longer be required to notify a conservation officer. The amendments would require a nuisance animal be euthanized or released, and it cannot be sold, gifted, or traded. The rules governing possession of live raccoons, foxes, and coyotes would amend the timeframes at which those mammals may be possessed live during the season, would amend housing

requirements, and would amend standards for the possession of untanned hides and carcasses of furbearing mammals.

Jensen said two additional technical amendments that are needed to the rule as posted to the *Indiana Register*. In 312 IAC 9-3-14.5(e), the posted language in subsection (e) requires the immediate euthanasia of a furbearing mammal while also appearing to allow euthanasia to occur within 24 hours. The Division of Fish and Wildlife noted that proposed language in 312 IAC 9-3-14.5(b) appears to differ with requirements for the possession of wild animals under other licenses and permits identified in this subsection. Jensen said the two technical amendments would address the conflicting language. She then recommended the amendments with technical revisions be given final adoption.

Tim Julien, speaking on behalf of the Indiana State Trappers Association (ISTA), noted that the proposed rule is “a complicated rule, and it took the trappers of Indiana quite some time to digest it and decide what we thought about it.” ISTA was involved in discussions with the Department regarding the amendments to set housing and care standards. Julien noted, however, the rule proposal reduces the species that can be possessed. “We weren’t ready for that. We had a debate whether we would accept that.... We’ve decided that it’s okay because we have always stood for reduction of public possession of wild animals. It stood to reason that we should reduce which species we keep.” Julien said the only ISTA objection is that there is no provision of those species to be transferred to a possession permit or to a game breeder, or other legitimate options that were once available. “We can agree to that change on species and requiring the housing and care requirements.... We are against the reduction in species unless we can get something added that allows the transfer of those other species...other than keeping them under a trapper’s license.”

Julien said ISTA strongly objected to amendments at 312 IAC 9-3-14.5. “It’s ridiculous. It’s antiquated. We waited over and over to get this on the table. It was our request to remove it.” With the economic situation and its impact to the fur industry, the amendment is “really pointless. To change this rule to the 15th of May has no advantage for law enforcement being able to determine whether it was legally taken or not. 15th of May or no time limit at all, it’s the same environment for law enforcement.” After May 15, he said there is no value in fur harvest.

Jensen responded that Julien’s concerns may warrant further discussion, but any further amendments would need to be addressed in a separate rule package.

The Chair suggested the proposed rule be moved forward including the two technical amendments. Any remaining ISTA issues should be discussed further with the Department, which may result in a separate rule proposal.

Jensen noted that the Commission had the option to not give final adoption to the proposed amendments, and then ask the Department to enter into further discussion with ISTA.

The Chair said, “I think it would be a mistake to start it all over. There has been a lot of work that has been done. I hear what Tim Julien is saying.”

Mark Ahearn moved to give final adoption of rule amendments to 312 IAC 9-3-14.5 and 312 IAC 9-3-15 governing possession and release of furbearing mammals, with inclusion of the technical amendments at 312 IAC 9-3-14.5(b) and 312 IAC 9-3-14.5(e). Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Consideration of rule processing, public comments, analysis, and recommendation regarding final adoption of rule amendments to 312 IAC 1 and 312 IAC 8 governing the use of Redbird Riding Area, Interlake State Recreation Area and other natural and recreation areas; LSA Document #10-668(F); Administrative Cause No 09-025T

Sandra Jensen also presented this item. She said the Redbird Riding Area and the Interlake State Recreation Area are the first two “DNR properties” where off-road vehicles are authorized. The rule proposal adds several definitions to improve clarity and enforceability on these two properties, as well as containing technical amendments applicable to all DNR properties.

Jensen said the Commission gave preliminary adoption to the amendments in May 2010. No public comments were received. “The rules are appropriate and certainly are going to offer some improved safety on DNR’s off-road vehicle properties.” Technical amendments to definitions applicable to all properties should provide improved clarity and greater flexibility for future rule amendments. Jensen recommended the proposed amendments be given final adoption.

Donald Ruch asked for clarification regarding the proposed definition of “mushroom” at 312 IAC 8-1.5-15. He said that in the Midwest “edible mushroom” might mean a “morel”. A patron at a property would be unlikely to know, among all fungi on a DNR property, which are edible and which are not.

Jensen said the proposed rule language was developed through the DNR Property Rules Committee. From a legal perspective, “edible mushroom” could mean “any fungi that are not poisonous or that are otherwise edible for human consumption.” This definition of “mushroom” currently exists at 312 IAC 8-1-4(11), which is being repealed, and would be restated in 312 IAC 8-1.5.

Ruch asked whether the intent is to define what mushrooms could be picked at the site. Jensen answered that wherever the term mushroom is used it would refer to any fungi that would be edible.

Ruch asked, “Is the proof here going to be that if somebody picks something that’s not edible that happens to be toxic and eats it and whatever?” Jensen responded that since she was not involved in the development of the rule language, she could not elaborate on the intent.

John Davis observed the definition of “mushroom” already pertains to other DNR properties, and the proposed rule would extend the definition for application to the Redbird Riding Area and Interlake State Recreation Area. Jensen agreed.

Ruch noted that in 312 IAC 8-1.5-3, the definition of “nut” is erroneous. A nut is not a seed, “but a fruit.” He suggested rewording the definition to “‘nut’ means a fruit of any of the following”. The stated definition would allow someone to “actually pull the fruits apart, pull the seed out and throw it back, and take all of the fruit out.”

Jensen said a written comment would be needed to make a substantial change to the proposed language posted in the *Indiana Register*. But Ruch’s suggested amendment may qualify as a technical rather than substantial change. If included at final adoption without the support of a written comment, whether the change is substantive or technical would be in the discretion of the Attorney General.

Vice Chair Stautz noted the definition of “nut” at 312 IAC 8-1.5-16 refers to the nut’s common name but does not include the scientific name. To be consistent with other Commission rules, scientific names should also be included for better clarity. She suggested scientific names also be inserted in the definition of “berry”, “fruit” and “greens” at 312 IAC 8-1.5-4, 312 IAC 8-1.5-9, and 312 IAC 8-1.5-10, respectively.

The Chair recommended that the proposed amendments be given final adoption with suggested technical corrections.

Jensen asked for further clarification regarding the suggested changes.

Ruch said that in 312 IAC 8-1.5-16 the definition of “nut” should be amended to read “fruit/seed”.

Jensen noted that Vice Chair Stautz suggested adding scientific names to definitions at 312 IAC 8-1.5-4, 312 IAC 8-1.5-9, and 312 IAC 8-1.5-10. Further clarification is needed regarding the definition of “mushroom” at 312 IAC 8-1.5-15. LSA drafting guidance does not favor the inclusion of combining words such as “and/or” or “fruit/seed”.

Ruch suggested amending the definition of “mushroom” as “any macroscopic fruiting body of a fungus”.

Mark Ahearn asked for clarification regarding the reason “edible” was included in the definition of “mushroom”. He asked Dr. Ruch whether his amended definition encompasses edible mushrooms. “I’m assuming someone prior to us thought through what the language was, and I don’t know if we defined ‘edible’ out of it” that would be carrying forward the prior intent.

The Chair asked for clarification regarding processing the suggested amendments.

Jensen said the Commission could give final adoption to the proposed amendments with the suggested amendments. She said the suggested amendment to 312 IAC 8-1.5-16 may be considered a technical change and could be appropriate.

Davis asked whether it were feasible to give final adoption of the proposed rules as presented without the suggested amendments, but then give instruction to the DNR Property Rules

Committee to formulate amendments to the definitions. He said he would have the Committee review the definition of “motorized cart”.

Jensen responded that any proposed amendments from the DNR Property Rules Committee could then be processed in a separate rule package. Another possibility is that if the Commission gives the proposed amendments final adoption as posted in the *Indiana Register*, and these are later approved by the Attorney General and Governor, some or all of the changes suggested today by Commission members might properly be inserted later as errata without beginning another rule adoption process.

Davis said that the DNR Property Rules Committee would be able to further define any term contained in the current rule package, and those clarified terms would then be brought back before the Commission for approval.

The Chair said, “I think this issue is important enough, because it was brought out.” He then recommended that the proposed rule amendments be given final adoption with the suggested amendments at 312 IAC 8-1.5-16 to replace “seed” with “fruit/seed”; add the scientific names at 312 IAC 8-1.5-4, 312 IAC 8-1.5-9, 312 IAC 8-1.5-10, and 312 IAC 8-1.5-16; and instruct the DNR Property Rules Committee to review the definitions within 312 IAC 8 in order to formulate amendments that would further clarify the terms.

Ruch moved to give final adoption to the proposed rule amendments to 312 IAC 1 and 312 IAC 8 governing the use of Redbird Riding Area, Interlake State Recreation Area, and definitions for all DNR properties, as recommended by the hearing officer, but additionally with amendments at 312 IAC 8-1.5-16 to replace “seed” with “fruit/seed” and to add scientific names at 312 IAC 8-1.5-4, 312 IAC 8-1.5-9, 312 IAC 8-1.5-10, and 312 IAC 8-1.5-16. He also moved to instruct the DNR Property Rules Committee to review the definitions within 312 IAC 1 and 312 IAC 8 and propose amendments that would further clarify the terms. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration for recommendation of final action on readoption of 312 IAC 13 governing water well drillers; LSA #11-4(F); Administrative Cause No. 11-003W

Jennifer Kane also presented this item. She said for consideration is the readoption of 312 IAC 13, which provides standards for water well drillers. The rules codified under 312 IAC 13 are proposed to be re-adopted without amendment. Kane said the Director of the Commission’s Division of Hearings approved preliminary action on January 13, 2011. She recommended the Commission approve for readoption 312 IAC 13 in its entirety and without amendment.

Brian Blackford moved to approve for final readoption 312 IAC 13 governing water well drillers. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

INFORMATION ITEMS

Lake Michigan Shipwrecks Project

Mike Molnar, Coordinator for the Lake Michigan Coastal Program (the “LMCP”), provided an overview of the 2011 Lake Michigan Shipwrecks Project managed through the Lake Michigan Coastal Program. He said the LMCP was created ten years ago, and it is currently located in the DNR’s Division of Nature Preserves. Three years ago the LMCP, with much input from governmental and private stakeholders, began reviewing shipwrecks within Indiana’s Lake Michigan waters. The project is being funded by the National Oceanic Atmospheric Administration (NOAA), Office of Coastal Resources Management. He said the Section 309 funding results from a five year plan to address LMCP weaknesses.

Molnar said the duration of the shipwreck project is two years and will include: (1) site assessments; (2) site management plan development; (3) and public outreach. “First, we have to know what’s there; and secondly, we’re going to work to better manage the resources that we have out in the lake.” Molnar said there are 20 known shipwreck sites, and there may be as many as 50 wrecks within Indiana’s Lake Michigan waters. These date from the mid 1800s through the early 1930s. He said assessments will be completed for the 20 known wreck sites with an additional 10 assessments completed as more information is available. A site management plan will be developed for one site, and that plan will be the template for the remaining management plans. The management plan for one of the sites will be submitted for nomination to the National Register of Historic Sites. The project contractors will begin field investigations next month and are expected to complete their investigations by August 30, 2011.

Molnar said the Department’s Division of Historic Preservation and Archaeology (DHPA) is the lead agency regarding the historic significance of the sites. LMCP is the facilitator of the project, but DHPA is reviewing the project reports. “Dr. Rick Jones has been very helpful.” The project will be completed by January 2012, and there will be public outreach materials developed throughout the project. The project steering committee is populated by persons in academia, representatives from the Field Museum of Natural History, Underwater Archaeological Society of Chicago, Indiana Dunes National Lake Shore, and Lake County Historical Society, and other representatives including Department and the Commission’s Division of Hearings staff.

Molnar said that policy considerations may be brought before the Commission. Indiana needs to state a claim on a shipwreck site in order to most effectively retain ownership. “Local management involvement is going to be key. The locals are the eyes and ears up there. They have a vested interest” in protection of the resource. Indiana could pursue a Marine Protected Area or a Federal designation that applies to the Great Lakes, to protect a shipwreck site.

Vice Chair Stautz asked whether Indiana had any marine protected sites.

Molnar responded that the Indiana Dunes National Lakeshore designated itself as a marine protected site, but the designation is currently being reviewed.

Molnar provided a brief history of the Department's involvement in assessing shipwrecks. In the 1980s Gary Ellis, former State Archaeologist, and a number of conservation officers conducted dives on some of the wrecks, which resulted in inventories and reports of approximately 16 sites. Additional work was completed in 2000 regarding shipwrecks. New technology has improved site assessment, accessibility, and has reduced the cost of site assessment.

Molnar said the next steps after project completion would be management plan implementation, who will manage the sites, public outreach and education. "The goal is to get the dive community engaged." A web page is being developed on the Commission's Web site to act as the portal for gathering data and other information.

Lake Michigan Water Trail Project

Jenny Orsburn, Program Specialist with the LMCP, with offices at the Indiana Dunes State Park, provided an overview of a lake-wide initiative involving Lake Michigan. She provided background regarding paddling in Northwest Indiana. In 2007, the "Green Ways and Blue Ways Plan" was published to identify preservation and restoration projects, but the Plan also touched on the importance of Indiana's waterways for user access and water quality. The Plan identified potential routes to have paddling access for canoes and kayaks, such as the Lake Michigan Water Trail and the Kankakee River Water Trail.

Orsburn said she has been coordinating with the Division of Law Enforcement, Division of Fish and Wildlife, Division of Water, paddling groups, and the Northwestern Indiana Regional Planning Commission regarding education on paddling in Indiana's waterways, access, jurisdiction, navigability, and stream bank restoration. LMCP has also coordinated public events, such as the Water Trail Expedition, which was a kayak event from Chicago to Michigan City. There have also been "fun floats" on Trail Creek, which are part of Coast Week and Coastal Awareness Month, and art events celebrating paddling.

Dan Plath, representing the Northwest Indiana Paddling Association (NWIPA), reported NWIPA was "borne out of a watershed plan, a planning effort in Michigan City on Trail Creek... It will be five years now since we developed the plan to help clean up the river." NWIPA was formally founded in 2009, and its primary mission is threefold and is in tandem with the American Canoe Association: (1) organize paddling events partnering with many watershed groups; (2) education; and (3) safety. Plath said NWIPA is working to create the "longest national recreation trail, actually in the world, on the Lake Michigan Water Trail", and has applied to the Department of Interior for the designation. The first segment of the water trail is from Chicago through Indiana to New Buffalo, Michigan. "Our goal is to create a circle all around Lake Michigan, 1,600 miles."

Plath said Wisconsin has posted public meeting notices regarding its section of the Lake Michigan water trail, and Chicago's water trail section is complete. Wisconsin is within two years of completing its section, and Indiana's section of water trail is complete. Indiana's Lake Michigan water trail consists of public access points every two to eight miles, including major portion in the Indiana Dunes National Lakeshore, the Indiana Dunes State Park, and local park districts. He said there is a lot of public support for the trail, and part of the process is to acquire

letters of support from State trail managers, public access owners, mayors, and other officials. He said NWIPA has received support from six legislators. “This is a case where we’ve gotten widespread consensus all the way from the Mayor of Chicago, every mayor along the coast in Indiana, the National Lakeshore, and the DNR.” Funding has been supplied through the LMCP. The trail utilizes existing infrastructure, so funding is used efficiently. “It doesn’t take much money to develop water trails.”

Jenny Orsburn said issues remained concerning the development of blue-ways and the resolution of navigability, user conflicts, and property rights. She noted Indiana’s Lake Michigan coastline contains industry as well as the Indiana Harbor, and the water trail takes these industries into consideration. “It is highlighted that boats should stay at least $\frac{1}{4}$ of a mile away from those areas. At the same time, these industries do offer safe harbor” in case of an emergency. She provided information regarding Portage Lakefront River Walk, a partnership park between City of Portage and the National Lakeshore. The River Walk provides access to paddlers to enter Lake Michigan. Orsburn commended Brandt Baughman, Property Manager of Indiana Dunes State Park, for his participation. The park has purchased and placed kayak buoys, which allows for demarcation between the State Park and Porter beaches. Kayakers are allowed to enter the State Park at the beach, but will pay the regular walk-in and camping fees. If paddlers are camping at the sites, the State Park will provide overnight kayak storage. Michigan City is actively supporting paddling, and Trail Creek is one of the major blue-way trail accesses.

Orsburn concluded by saying the LMCP provides grants for site improvements and public access. Two \$75,000 grants were rewarded to Long Beach for public access improvements for paddling, biking, and beach going. The lamprey barrier currently imposes an impediment to paddling, but LMCP is coordinating with the Division of Fish and Wildlife and Michigan City to identify potential improvements for portage.

Plath said Long Beach participation “is really a big success story. There was a big gap between New Buffalo, Michigan and Michigan City.... We are hoping that this translates into some of the other communities where public access is very limited.” He said other projects are ongoing on the Kankakee River, Trail Creek, and on the Little Calumet River. Plath concluded by inviting Commission members and Department staff to celebrate National Trails Day (June 4, 2011), the dedication date for the National Recreation Trail on Lake Michigan.

Adjournment

The Chair announced the next Commission meeting would take place on July 19, 2011 at 7:00 p.m., EDT at Clifty Falls State Park.

The meeting was adjourned at approximately 7:57 p.m., EDT.

May 18, 2011 Commission Tours

Commission members toured the Trine State Recreation Area and Pokagon State Park. Lisa Johnloz, Assistant Property Manager at Pokagon State Park, led the tour, and provided information on the updates to the properties.